



## **SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION**

### **5 CFR Part 9301**

### **RIN 3460-AA04**

### **Freedom of Information Act and Privacy Act Procedures**

**AGENCY:** Special Inspector General for Afghanistan Reconstruction.

**ACTION:** Final rule.

**SUMMARY:** The Special Inspector General for Afghanistan Reconstruction (SIGAR) published an interim final rule enacting changes to its Freedom of Information Act regulation to comply with the FOIA Improvement Act of 2016 on January 4<sup>th</sup>, 2017. SIGAR is now adopting those amendments as final with changes.

**DATES:** This final rule is effective [insert date 30 days after the date of publication in the Federal Register].

**FOR FURTHER INFORMATION CONTACT:** William Gaertner, Associate General Counsel, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202, (703) 545-5994.

**SUPPLEMENTARY INFORMATION:** On January 28, 2008, the President signed into law the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), which created SIGAR to conduct independent and objective audits, investigations and analysis to promote economy and efficiency, and to detect and deter waste, fraud, and abuse in the reconstruction of Afghanistan. The Freedom of Information Act (FOIA), as amended, provides for access by the public to records of executive branch agencies, subject to certain restrictions and exemptions. In

order to establish procedures to facilitate public interaction with SIGAR, the agency published 5 CFR part 9301 setting forth SIGAR's regulations governing the access provisions of those statutes and Executive Order 12958. On June 30, 2016 the President signed into law the FOIA Improvement Act of 2016 (Pub. L. No. 114-185). SIGAR published an interim final rule amending its FOIA regulations based on the changes made in the FOIA Improvements Act of 2016 on January 4<sup>th</sup>, 2017.

SIGAR received comments on its interim final rule from two government agencies. SIGAR reviewed these comments and is making changes to the interim final rule based on those comments.

## **II. The Final Rule**

This final rule amends portions of SIGAR's existing regulation implementing provisions of the FOIA (5 U.S.C. 552). The provisions of this amendment shall apply to all components of SIGAR. The FOIA provides for the disclosure of agency records and information to the public, unless that information is exempted under delineated statutory exemptions under the FOIA. The procedures established here are intended to ensure that SIGAR fully satisfies its responsibility to the public to disclose agency information, but continues to safeguard sensitive information properly.

### **Procedural Requirements:**

This Final Rule amends SIGAR's regulations implementing the FOIA to facilitate the interaction of the public with SIGAR. SIGAR's policy of disclosure follows the Presidential Memorandum of January 21, 2009, "Transparency and Open Government," 74 FR 4685, and the Attorney General's March 19, 2009 FOIA policy guidance, advising Federal agencies to apply a

presumption of disclosure in FOIA decision making. This Final Rule incorporates portions the FOIA Improvement Act of 2016, signed into law by the President on June 30, 2016. This amendment maintains SIGAR's compliance with the FOIA and those amendments to the FOIA adopted in the FOIA Improvement Act of 2016.

Finally, notice of proposed rulemaking is not required, because the provisions of the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply. It has been determined that this rulemaking is not a significant regulatory action for the purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

Dated: June 16, 2017

**John F. Sopko**

Inspector General

#### **List of Subjects in 5 CFR Part 9301**

Administrative practice and procedure, Freedom of information.

#### **Authority and Issuance**

Accordingly, as stated in the preamble, SIGAR is adopting the interim rule published January 4, 2017, at 82 FR 711, as final with the following changes:

#### **PART 9301—[AMENDED]**

1. The authority citation for part 9301 continues to read as follows:

Authority: 5 U.S.C. 552; Pub. L. No. 110-175, 121 Stat. 2524 (2007); 5 U.S.C. 301 and 552; Exec. Order 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; Exec. Order No. 13392, 70 FR 75373-75377, 3 CFR, 2006 Comp., pp. 216-200.

2. In § 9301.6, paragraphs (c)(1)(ii) and (d)(3) are revised to read as follows:

**§ 9301.6 Requesting records.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) *Adverse determinations.* If the FOIA Officer denies the request, in full or part, or applies exemptions to withhold requested documents, the FOIA Officer shall provide the requester written notice of the adverse determination together with the approximate number of pages of information withheld and the exemption under which the information was withheld. SIGAR will indicate, if technically feasible, the amount of information deleted and the exemption under which the deletion is made at the place in the record where the deletion was made. SIGAR will also indicate the exemption under which a deletion is made on the released portion of the record, unless including that indication would harm an interest protected by the exemptions. The notice shall also describe the procedure for filing an appeal. SIGAR will further notify the requester of their right to seek assistance from SIGAR's FOIA Public Liaison or dispute resolution services from the FOIA Public Liaison or the Office of Government Information Services in the case of an adverse determination.

\* \* \* \* \*

(d) \* \* \*

(3) *Dispute Resolution.* A response to an appeal will advise the requester that the 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer dispute resolution services to resolve disputes between FOIA requesters and Federal agencies as a nonexclusive alternative to litigation. Dispute resolution is a voluntary process. A requester may contact OGIS in any of the following ways: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740; Email: [ogis@nara.gov](mailto:ogis@nara.gov); Telephone: 202-741-5770; Facsimile: 202-741-5769; Toll-free: 1-877-684-6448.

3. In § 9301.8, paragraph (f)(3) is revised to read as follows:

**§ 9301.8 Fees in general.**

\* \* \* \* \*

(f) \* \* \*

(3) SIGAR determines that unusual circumstances apply to the processing of a request, provides timely notice to the requester, and delay is excused for an additional ten days, but SIGAR still fails to respond within the timeframe established by the additional delay. This provision applies only to search fees or duplication fees for educational institution, non-commercial scientific institution, or representative of the news media requesters. However, the following exceptions shall apply:

(i) Notwithstanding § 9301.8(f)(3), if SIGAR determines that unusual circumstances apply and that more than 5000 pages are necessary to respond to the request, SIGAR may continue to

charge search fees, or duplication fees for requesters in preferred status, for as long as necessary, after timely written notice has been made to the requester and SIGAR has discussed with the requester how the requester could effectively limit the scope of the request via written mail, electronic mail, or telephone, or made three good-faith attempts to do so.

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